

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Case No. 07- CR- 396 (JES)

-against-

ERIC LESAK,

Defendant(s).

PETITION FOR
DETERMINATION OF THIRD
PARTY INTEREST IN REAL
ESTATE SUBJECT TO
FORFEITURE

EMIGRANT MORTGAGE COMPANY ("Emigrant"), by its counsel, Knuckles & Komosinski P.C., for its Petition for a Determination of Third Party Interest in Real Estate Subject of Forfeiture ("Petition") states as follows:

I. JURISDICTION

1. Emigrant is a corporation duly organized and existing under the laws of the State of New York.

2. This Petition arises out of the criminal forfeiture proceedings that are ancillary to the instant criminal proceedings regarding Erik Lesak (the "Defendant").

3. The subject of this Petition is the real estate and improvements situated in the Town of Manorville, County of Suffolk, State of New York, and commonly known as 216 Mill Road, Manorville, New York 11949 (the "Subject Premises"), and more fully described in the attached **Exhibit "A"**.

4. This Petition is brought in accordance with the provisions of 21 U.S.C. § 853(n) and Fed. R. Crim. P. 32.2(c).

II. FACTS

5. Tara Lesak (hereinafter "Lesak"), the spouse of the Defendant Eric Lesak borrowed the sum of \$350,000.00 from Emigrant Mortgage Company, Inc., as evidenced by a note dated April 8, 2005. The loan was secured by a mortgage of the same date on the Subject Premises. Copies of the Note and Mortgage are annexed hereto as **Exhibits "B"** and **"C"** respectively.

6. The mortgage was duly recorded with the Suffolk County Clerk on April 28, 2005, in Liber/Reel 21035 of Mortgages at Page 563 and the mortgage tax was fully paid thereon.

7. Tara Lesak defaulted in making the installment payment of \$3,333.14 (as adjusted) due June 1, 2005 and monthly thereafter.

8. Notice of Default was duly served on Tara Lesak on September 19, 2005, as required under the mortgage instrument. Lesak failed to make any payments and remains in default for the installment payment of \$3,333.14 due June 1, 2005, and monthly thereafter.

9. As a result of the continued default, Emigrant commenced foreclosure proceedings by filing the Summons, Complaint and Notice of Pendency with the Suffolk County Clerk on October 25, 2005.

10. Due to the sovereign immunity of the United States of America, the foreclosure action was placed on hold, although interest continued to accrue, and Emigrant continued to make advances (taxes, insurance, etc.) to protect its interest in the Subject Premises.

11. In addition to the principal and interest owed on the note, Emigrant has made numerous advances for taxes, insurance, inspections, legal fees and costs associated with the foreclosure action. The note and mortgage specifically allow Emigrant to recoup any monies advanced for taxes, insurance, inspections, fees and costs associated with the collection of the mortgage debt. See paragraphs 4, 5 and 22 of the mortgage document.

12. That as of October 10 2007, the following sums are due and owing:

Principal:	\$350,000.00
Contract interest rate from 05/01/05 through 10/11/07:	\$93,593.31
Late Charges:	\$1,560.04

Miscellaneous Advances (Itemized):

a) Insurance 8/21/07	\$3,005.43
b) Escrow credit 9/27/05	\$2,152.24 -
c) Escrow credit 10/25/05	\$10.38 -
d) Brookhaven Town taxes 12/29/05	\$4,265.89
e) Escrow credit 1/27/06	\$0.01 -
f) Insurance 2/22/06	\$2,397.78
g) Brookhaven Town taxes 5/18/06	\$4,265.88
h) Insurance 8/29/06	\$2,397.78

Appraisal fees 8/1/07	\$350.00
Inspection fees	\$58.00
Legal Fees and costs	\$2,070.00

TOTAL :	\$461,801.48
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13. That none of the above sums have been paid and Tara Lesak remains in default.

14. That Emigrant's mortgage lien attached to the property on April 28, 2005. That the Middle District of Florida indictment of the Defendant was not handed down until May 25, 2005, one month after the mortgage was recorded against the subject property.

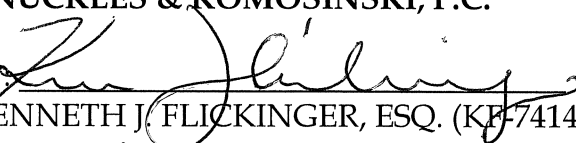
15. That Emigrant has a legal right in the Subject Premises which renders the order of forfeiture invalid, in whole or in part, because the interest was vested in Emigrant prior to any notice of the commission of the acts which gave rise to the forfeiture of the Subject Premises, and Emigrant is a bona fide encumbrancer for valuable consideration that had no notice or reason to believe that the Subject Premises was subject to forfeiture.

WHEREFORE, Emigrant Mortgage Company prays that this Court enter an
Order:

- a. Finding that Emigrant Mortgage Company's lien has priority over the interest of the United States of America; and
- b. granting Emigrant Mortgage Company such other and further relief as this Court deems just and proper.

Dated: Tarrytown, New York
October 12, 2007

Respectfully yours, etc.,
KNUCKLES & KOMOSINSKI, P.C.

By: 
KENNETH J. FLICKINGER, ESQ. (KF-7414)
Attorneys for Petitioner
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Tarrytown, NY 10951
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VERIFICATION

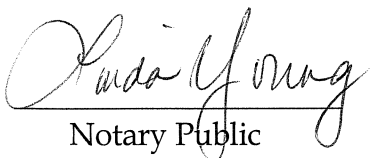
Joel Marcano, being duly sworn, and under the penalty of perjury, deposes and says that he is Assistant Treasurer of Emigrant Mortgage Company ("Emigrant"), that he has read the foregoing Petition for Determination of Third Party Interest in Real Estate Subject to Forfeiture ("Petition"); that the Petition was prepared with the assistance and advice of counsel and the assistance of certain employees of Emigrant, upon which he has relied; that the information and data contained in the Petition were collected in part from and were based in part upon the business records of Emigrant and are necessarily limited by such records still in existence; and that subject to the limitations set forth herein, the statements in the Petition are true to the best of his knowledge, information and belief.

EMIGRANT MORTGAGE COMPANY

By: 

JOEL MARCANO, ASSISTANT TREASURER

Sworn to before me this
 15th day of October, 2007


 Notary Public

LINDA YOUNG
 Notary Public, State of New York
 No. 01Y05067926
 Qualified in Nassau County
 Commission Expires October 28, 2010